IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2147 OF 2001

Mr. N.S. Madkaikar ..Petitioner.

vs.

The C.K.P. Co-operative Bank Ltd.

& Ors. ..Respondents.

....

Mr. Mahesh Londhe i/b Mr. Sanjay Udeshi for the Petitioner.

Mr. A.A. Kocharekar with Mr. V.P. Sawant for Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

28th January, 2005.

P.C. :

1. The Petitioner who was an accountant of the First Respondent Bank was issued a charge sheet in respect of a disciplinary proceeding on 27th February, 1988. It would be material to quote the relevant part of the charge sheet for the purposes of the present proceedings :

"II. You are working with the Bank as an Accountant. It is one of your duties to pass the cheques, received by the Bank for payment after complying with the necessary procedure. When a cheque is deposited by the customer in his account, no payment can be made to the concerned customer unless and until the said cheques are credited in the concerned Account and/or necessary balance is there to the account of the customer. As an Accountant it is one of your normal duties to ensure that the cheques are credited in the concerned accounts and/or there is sufficiently/ necessary balance in the account before the payment is made to the concerned customer. However, in respect of certain cash payments against cheques, it is alleged against you as under :

III. You passed the certain cash payments against the cheques though neither the said cheques were credited in the concerned accounts nor was there required balance in the concerned accounts. The details of the said transactions/payments are given in the annexure "A" to this charge-sheet.

IV. On 5.5.1986 the representative of M/s. Ambica Enterprises approached the Bank to open its account with the Bank. You were also present at that time. As per usual procedure for opening an account with the Bank, introduction by Bank's customer to M/s. Ambica Enterprises was necessary. It is alleged that you compelled Shri. Sule, a customer of the Bank (A/c. No.444) who had come at that time to the Bank for his work, to give introduction to M/s. Ambica Enterprises. After the opening of account by M/s. Ambica Enterprises four other parties viz. M/s. Pankaj Metal Industries, M/s. Deepak Enterprises, M/s. M.K. Jain & Co. & M/s. Praful Enterprises opened their accounts with the Bank with the introduction as follows :

i) M/s. Pankaj Metal Industries,
Account opened on 2.6.1986
Introduced by M/s. Ambica Enterprises.

ii) M/s.Deepak Enterprises
Account opened on 21.6.1986
Introduced by M/s. Pankaj Metal

Industries

iii) M/s. M.K.Jain & Co.
Account opened on 17.7.1986
Introduced by M/s. Deepak Enterprises

iv) M/s. Praful Enterprises
Account opened on 8.12.1986
Introduced by M/s. Deepak Enterprises.

V. If a cheque drawn on the Bank is issued by a customer of the Bank to the other party and if there is no required balance/credit in the account of the concerned customer to pass the cheque issued by him, as an Accountant it is one of your normal duties to honour or dishonour such cheque after bringing it to the notice of the General Manager or Manager and without taking necessary instructions from them (Annexure A). It is further alleged that although you allowed the customers to avail overdrawn facilities as above, you did not charge necessary interest on the overdrawn amount. In some of the cases you have charged the interest less than the interest which you

were ought to have charged. A statement showing details of aforesaid transactions is annexed hereto and marked as Annexure "B". VI. In view of the circumstances set out herein above following acts of misconduct are alleged against you :

i) Passing/Approving/Paying the cash payment against the cheque before the said cheques were credited in the concerned account;

ii) Passing/Approving/Paying the cash payment against the cheques without there being the required balance/credit in the concerned accounts;

iii) Compelling the customer of the Bank to give his introduction to M/s. Ambica Enterprises so as to make a way for M/s. Pankaj Metal Industries, M/s. Deepak Enterprises, M/s. M.K. Jain & Co., & N/s. Praful Enterprises to open their accounts;

iv) Unauthorizedly allowing the customers to avail the overdrawn facility;

v) Failure to charge interest on the overdrawn amount;

vi) Charging less interest on the overdrawn amount;

vii) Charging more interest on the overdrawn amount;

viii) Causing loss of amount Rs.1,05,000/- to the Bank on account of failure to recover interest from the customers."

2. The Petitioner was accordingly charged for fraud or dishonesty in connection with the business and doing an act prejudicial to the interest of the bank. The disciplinary proceedings having ended in an order of dismissal, the Petitioner filed a complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour

Court by its order dated 30th December, 1994 held that the enquiry was fair and proper and on 30th December, 1995 dismissed the complaint holding that the charges had been adequately proved and that since the charges were grave and serious in nature; the Petitioner was holding the post of an accountant, a post of trust and confidence, the punishment of dismissal was not disproportionate. The order of the Labour Court has been confirmed in revision by the Industrial Court.

3. Two submissions have been urged in challenging the finding of the Labour Court in the Part I award. Firstly, it was submitted that the charge was vague. Secondly, it was urged that the enquiry was held in English whereas the Petitioner was conversant in Marathi. There is absolutely no merit in the first submission. The charge sheet is not vague. Necessary particulars of allegations were furnished to the Petitioner. A bare perusal of the charge sheet would indicate that the Petitioner was clearly made aware of the nature of the allegations against him. In so far as the allegation that the enquiry was held in English is concerned, the Labour Court has noted from the

evidence of the Enquiry Officer that the enquiry was conducted in Marathi but the proceedings were recorded in English. The proceedings of the day were explained in Marathi to the Petitioner. That apart, the Labour Court also noted that the Petitioner had at no stage mentioned while signing the proceedings that the proceedings had not been conducted in Marathi. That apart, as the Labour Court noted the Petitioner was an accountant and his contention that the enquiry proceedings should not have been recorded in English was, therefore, not reasonable.

4. In so far as the Part II award is concerned, it was sought to be urged on behalf of the Petitioner that in the present case some of the transactions have taken place on days when he was absent. The Labour Court has noted that out of 103 transactions, it was the submission of the bank that on dates representing only 10 transactions was the Petitioner absent. The second submission is that the Petitioner was not acting alone and there were other officials of the Bank who were not proceeded against. Such a submission can hardly lie in the mouth of the Petitioner. The guilt of

the Petitioner cannot be diluted by pointing to the guilt of others. The complicity of the Petitioner is established from the following findings that have been arrived at by the Labour Court :

> "It is submitted that the Modus operandi of the complainant was to make the entries of those cheques which were not cleared from the respective party's accounts, in sundry debtors accounts instead of showing necessary entry of dishonouring of concerned cheques does not reflect the ledger and no one comes to know about the dishonouring of concerned cheques even if ledger entries are checked.
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> 17. The Enquiry Officer in his report at page 26 has mentioned that the CSW used to keep such cheques to Sundry Debtors Accounts, therefore, the management of the Bank could not come to know about the return cheques. This finding of the Enquiry Officer is based on the evidence of Shri. Kangalgaonkar before him."
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> "The complainant used to seal the cheques, drafts for clearing after a period of two or three days during which period the parties used

to utilise the Bank’s money without interest. The complainant also used to keep the cheques returned by M.S.C. Banks as uncleared to Sundry debtors account therefore, they were not reflected in the ledger. After few days the complainant used to send again those uncleared cheques M.S.C. Banks for clearing and he used to cancel the entry in Sundry Debtors accounts. This facts is proved before the Enquiry Officer on the basis of evidence of Shri. Kandalgaonkar."

5. In the exercise of its supervisory jurisdiction under Article 226/227 of the Constitution, this Court would not be justified in reappreciating the evidence and substituting its own conclusions for the findings arrived at by the Labour Court. The submissions recorded in the earlier part of this order were the only submissions urged at the hearing. There is no merit in the Petition which is accordingly rejected. There shall be no order as to costs.